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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,544	08/26/2003	Martin Munzer	030482	5537

7590 02/22/2006

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EXAMINER	
BOESEN, AGNIESZKA	
ART UNIT	**PAPER NUMBER**
1648	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/649,544	MUNZER, MARTIN	
	Examiner	Art Unit	
	Agnieszka Boesen	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08/26/2003*.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-75* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-75* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Claims 1-13, 24, 29-50, 61 and 69-75 link inventions I, II, III, and IV. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claims, claims 1-13, 24, 29-50, 61 and 69-75. Upon the allowance of the linking claim, the restriction requirement as to the linked inventions shall be withdrawn and any claim depending from or otherwise including all the limitations of the allowable linking claim will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

I. Claim 14 and 51, drawn to a method of treating a patient infected with a contaminant, comprising raising the core temperature of the patient and returning the core temperature to normal, classified in class 604, subclass 5.02.

If Group I is elected, the Applicant is further required to elect **one** contaminant from the list in claims 14 and 51.

II. Claim 15 and 52, drawn to a method of treating a patient infected with a contaminant, wherein said contaminant has caused an acute, latent, or chronic equine herpes virus infection, classified in class 604, subclass 5.02.

III. Claim 16 and 53, drawn to a method of treating a patient infected with a contaminant, wherein said contaminant has caused an equine encephalitis infection in the patient, classified in class 604, subclass 5.02.

IV. Claim 17 and 54, drawn to a method of treating a patient infected with a contaminant, wherein said contaminant has caused a West Nile Virus infection in the patient, classified in class 604, subclass 5.02.

V. Claims 18-23, and 55-60, drawn to drawn to a method further comprising treating the patient with a pharmaceutical or other agent wherein said

pharmaceutical or other agent is indicated for a contaminant or used to boost the patient's immune system, classified in class 604, subclass 5.02.

If Group V is elected, the Applicant is further required to elect **one** agent from the list in claims 23 and 60.

Claims 25, 62 and 66 link inventions VI and VII. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claims, claims 25, 62 and 66.

VI. Claims 26-28, 31, 63-65 and 68 drawn to a method of treating a patient, wherein the patient is infected with the secondary contaminant, classified in class 604, subclass 5.02.

If Group VI is elected, the Applicant is further required to elect **one** secondary contaminant from the list in claims 26-28, 31, 63-65 and 68.

VII. Claims 30 and 67, drawn to a method of treating a patient, wherein the secondary contaminant is any genetically modified organism, classified in class 604, subclass 5.02.

If Group VII is elected, the Applicant is further required to elect **one** genetically modified organism from the list in claims 30 and 67.

2. The inventions are distinct, each from the other because of the following reasons: Inventions (I-IV), V, and (VI, VII) are drawn to different methods, a method of treating a patient infected with a contaminant, comprising raising the core temperature of the patient and returning the core temperature to normal, a method further comprising treating the patient with a pharmaceutical or other agent wherein said pharmaceutical or other agent is indicated for a contaminant or used to boost the patient's immune system, and a method of treating a patient, wherein the patient is infected with a secondary contaminant. These methods have different method steps and use different reagents. A search for a method of treating a patient infected with a contaminant, comprising raising the core temperature of the patient and returning the core temperature to normal is not co-extensive with a search for a method, which further comprises treating the patient with a pharmaceutical or other agent or the method wherein the patient is infected with the secondary contaminant. In addition even though in some cases the classification is shared, the different search would be required based upon the different contaminants and warfare agents causing different diseases and also different pharmaceuticals and other agents used to boost patient's immune system. For example, the literature search, required for Group I, regarding different contaminants of claim 14 would not necessarily reveal the literature

regarding the pathogens causing latent, chronic equine herpes virus infection, of Group II, equine encephalitis infection of Group III, or the West Nile Virus infection of Group IV. Inventions V, VI, and VII are distinct because the literature search required for Group V, regarding the pharmaceutical or other agent is not co-extensive with the search for the secondary contaminant of Group VI, or the search for the genetically modified organism of group VI. Thus, groups I, II, III, IV, V, VI, and VII are properly restricted based on being independent or distinct and having a burdensome search requirement.

Because the inventions are distinct for the reasons given above and the literature search required for one group is not co-extensive with any other group, and therefore presents a serious burden of search, restriction for examination as indicated is proper. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a

matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of In re Ochiai, In re Brouwer and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnieszka Boesen whose telephone number is 571-272-8035. The examiner can normally be reached on M – F (9:00AM – 5:30PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB

Agnieszka Boesen
February 16, 2006

JAMES HOUSEL 2/20/06
SUPERVISORY PATENT EXAMINER
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